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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 DARREL STEWART,

8 Plaintiff,

9 v.

10 HENRY RICHARDS, *et al.*,

11 Defendants.

Case No. 08-5275 RJB/KLS

ORDER GRANTING DEFENDANTS'  
MOTION TO STAY DISCOVERY

12 Before the Court is Defendants' motion to stay discovery pending resolution of Defendants'  
13 motion for summary judgment. (Dkt. # 17). For the reasons stated below, the Court finds that the  
14 motion should be granted.

15 **I. BACKGROUND**

16 On April 30, 2008, Plaintiff filed his 42 U.S.C. § 1983 complaint asserting a right to possess  
17 certain books within the Special Commitment Center (SCC), a Washington Department of Social  
18 and Health Services (DSHS) facility for the care and treatment of sexually violent predators  
19 pursuant to Wash.Rev.Code ch. 71.09, Washington's sexually violent predator statute. (Dkt. # 1).  
20 Plaintiff alleges that SCC Superintendent Dr. Henry Richards and SCC Forensic Therapist Diana  
21 Crawford violated his First Amendment rights when they declined to permit him to possess books  
22 with juvenile themes based on his criminal record. *Id.*, pp. 2-3.

23 On July 24, 2008, Defendants filed their motion for summary judgment seeking dismissal of  
24 Plaintiff's claim on the grounds that no constitutional right exists within a total confinement  
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1 treatment facility for sexually violent predators to possess counter-therapeutic media. (Dkt. # 15).

2 Defendants move to stay discovery pending resolution of their summary judgment motion.  
3 (Dkt. # 17). Plaintiff objects to the stay, arguing that he requires proof of Ms. Crawford's  
4 professional educational expertise. (Dkt. # 18, pp. 6-7). Plaintiff also argues that Defendants have  
5 stated the wrong legal standard applicable to his claim. *Id.*, p. 7.

6 In response, Defendants provided the Declaration of John Rockwell, Ms. Crawford's  
7 supervisor, who attests that Defendant Crawford's training and education for the forensic therapist  
8 position include an Associates Degree in Arts and Science, a B.A. in Criminal Justice, and an M.A.  
9 in Psychology. (Dkt. # 22, p. 2). Mr. Rockwell states that Ms. Crawford has worked with the  
10 mental health population within a correctional setting for approximately six years and as a  
11 requirement for her Master's degree, Ms. Crawford completed a practicum of 160 hours working  
12 with veterans. *Id.* Mr. Rockwell states that this background is consistent with the education, training  
13 and skills expected of a forensic therapist who is tasked with exercising professional judgment within  
14 the SCC program. *Id.*, p. 2-3.

## 15 II. DISCUSSION

16 The court has broad discretionary powers to control discovery. *Little v. City of Seattle*, 863  
17 F.2d 681, 685 (9<sup>th</sup> Cir. 1988). Upon showing of good cause, the court may deny or limit discovery.  
18 Fed. R. Civ. P. 26( c). A court may relieve a party of the burdens of discovery while a dispositive  
19 motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9<sup>th</sup> Cir. 1989), amended at 906 F.2d 465 (9<sup>th</sup>  
20 Cir. 1990) *Rae v. Union Bank*, 725 F.2d 478 (9<sup>th</sup> Cir. 1984).

21 Summary judgment is generally disfavored where relevant evidence remains to be  
22 discovered. *Taylor v. Sentry Life Ins.*, 729 F.2d 652, 656 (9<sup>th</sup> Cir. 1984) (per curiam). The burden  
23 is on the nonmoving party, however, to show what material facts would be discovered that would  
24 preclude summary judgment. *Hall v. Hawaii*, 791 F.2d 759, 761 (9<sup>th</sup> Cir. 1986). If further  
25 discovery could not elicit evidence that would raise genuine issues of material fact, summary

1 judgment would be appropriate. *Taylor*, 729 F.2d at 656. “To determine whether discovery would  
2 be fruitless, we look to the legal theories that might sustain the [non-movant’s] claims.” *Klinge v.*  
3 *Eikenberry*, 849 F.2d 409, 412 (9<sup>th</sup> Cir. 1988).

4 In a civil commitment setting, a patient’s liberty interests are balanced against the relevant  
5 state interests to determine whether the state has violated the patient’s constitutional rights.  
6 *Youngberg v. Romeo*, 457 U.S. 307, 318 (1982). Courts must show deference to the judgment  
7 exercised by qualified professionals. *Id.* at 323. The Constitution requires only that the courts  
8 make certain that professional judgment in fact was exercised. It is not appropriate for the courts to  
9 specify which of several professionally acceptable choices should have been made.” *Id.* at 321.

10 Plaintiff’s primary objection to the motion to stay was based on the absence of evidence of  
11 Defendant Crawford’s qualifications. Defendants have now produced evidence of those  
12 qualifications. (Dkt. # 22). Plaintiff’s concern that Defendants are stating the wrong legal standard  
13 is a question of law for the Court to resolve.

14 As Plaintiff has not identified what relevant, material facts would be discovered that would  
15 preclude summary judgment, Defendants’ motion to stay (Dkt. # 17) is **GRANTED** and discovery  
16 in this matter shall be **STAYED** pending further order of this Court.

17 DATED this 25th day of September, 2008.

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21 Karen L. Strombom  
22 United States Magistrate Judge  
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